Supreme Court, U.S.
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No. 05-23

IN THE

Supreme Court of the United States

MICHAEL ANGELO MORALES,

Petitioner,

v.

JILL L. BROWN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

Petitioner Michael Angelo Morales was sentenced to death for a single count of first degree murder aggravated by two special circumstances. On federal habeas review, the United States Court of Appeals for the Ninth Circuit invalidated one of the special circumstance findings (torture), sustained the other (lying in wait), and denied habeas relief. The questions presented are:

1. The lone surviving special circumstance finding in Morales's case is based on false testimony provided by a jailhouse informant, Bruce Samuelson. The Ninth Circuit, however, refused without explanation to issue a certificate of appealability on Morales's claims relating to the prosecution's use of Samuelson's false testimony, even though the federal courts of appeals are split over the correct standard for deciding the merits of Morales's claim under *Napue v. Illinois*, 360 U.S. 264 (1959), and even though Morales made a "substantial showing" on this issue under the law of two circuits. Did the Ninth Circuit violate the standards set forth in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), when it summarily denied a certificate of appealability on an issue over which the courts of appeals are split when the Petitioner's claims satisfy the *Miller-El* standard depending on how the circuit split is resolved?

2. Does California's lying-in-wait special circumstance violate the Eighth Amendment because, in contrast to every other state recognizing this special circumstance, California's definition of lying in wait does not require physical concealment and, thus, fails genuinely to narrow the class of convicted murderers eligible for the death penalty?

3. When a federal court of appeals determines that a state court has failed to conduct constitutionally adequate harmless error review under *Chapman v. California*, 386 U.S. 18 (1967) or *Clemons v. Mississippi*, 494 U.S. 738 (1990), should the court of appeals assess harmless error under *Brecht v. Abrahamson*, 507 U.S. 619 (1993) (as several Circuits have held) or under *Chapman* (as one Circuit has held)?

4. When a federal court of appeals determines that a state court has failed to conduct constitutionally adequate *Chapman* or *Clemons* review, should it remand to the state court to remedy its error or should the federal court conduct its own harmless error review?

PARTIES TO THE PROCEEDING

The parties to the proceeding before the United States Court of Appeals for the Ninth Circuit were Michael Angelo Morales (appellant below), and three individuals who have served as Warden of the California State Prison at San Quentin (appellees below) – Arthur Calderon, Jeanne S. Woodford, and Jill L. Brown.

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